IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.8.2007

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.27159 of 2007

S.Palanivel
Proprietor,
Palanivel Earth Movers,
3/329, Chinnankuppam Post,
Pappireddipatti,
Dharmapuri District .. Petitioner

vs.

The Deputy Commercial Tax Officer,
Harur, Dharmapuri District. .. Respondent

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent relating to its Demand in TNGST 3342133 CST 449816, dated 29.12.2006, and quash the same.

For petitioner : Mr.Kandavadivel Doraisami
For respondent : Mr.A.Shanmugasundarm
Government Advocate

O R D E R

Mr.A.Shanmugasundarm, the learned Government Advocate, takes notice for the respondent.

2. With the consent of the learned counsels appearing on either side, the writ petition itself is taken up for final disposal.

3. It is submitted by the learned counsel appearing on behalf of the petitioner that the issue involved in the present writ petition is covered by an order of a Division Bench of this Court made in M/S.RDS PROJECTS LTD., Vs. THE COMMERCIAL TAX OFFICER, (2007-08 (13) TNCTJ).

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4. Paragraphs 12 and 13 of the said order read as follows:

> "12. The above decisions would categorically show that the Apex Court has made a distinction between vehicles fitted with chains like caterpillars and military tanks and others. The excavator referred to in Bose Abraham's case (cited supra) was a motor vehicle fitted with inflated tyres and not chain plates like caterpillars or military tanks. The excavator in question in the present case is mounted on iron plates made into chain such as caterpillar vehicles or military tanks. Such an excavator is used for excavating the earth and loading in lorries and it cannot be used upon public roads, since the roads would get damaged by the chains. The excavator moves around only in work sites and it is not suitable or adapted for use in public roads. This position is also confirmed by the physical verification carried out by the respondent, as seen from his report extracted above. The Kerala High Court in the case of M/s.Ray Constructions Limited Vs. Intelligence Officer, Squad No.IV, Kozhikode (cited supra) while considering a similar issue has held that the excavators in question having regard to its distinguishing features from the other excavators has to be held as not motor vehicle falling under the definition of the term defined under Section 2(28) of the Motor Vehicles Act, 1988 and therefore, not liable for entry tax. It is relevant to note that the Volvo Excavators purchased by the petitioner which is the subject matter of levy of entry tax are exactly similar to the excavators which were the subject matter in the above referred reported decision of the Kerala High Court.
>
> 13. Under the circumstances, the impugned show cause notice cannot be sustained and it is hereby set aside. The writ appeal is disposed of accordingly."

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5. Mr.A.Shanmugasundarm, the learned Government Advocate, appearing on behalf of the respondent had not refuted the statement made by the learned counsel for the petitioner.

6. In such circumstances, the writ petition is allowed, in view of the said order of the Division Bench of this Court made in M/S.RDS PROJECTS LTD., Vs. THE COMMERCIAL TAX OFFICER, (2007-08

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(13) TNCTJ). No costs. Consequently, connected M.P.Nos.1 and 2 of 2007 are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

The Deputy Commercial Tax Officer,
Harur, Dharmapuri District.

1 cc to Mr.Muthumani Doraisamy, Advocate, Sr. 52378

W.P.No.27159 of 2007

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